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Laura Hartt, Rule Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A,
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Submitted via email to WRD_DL_rulecoordinator@water.oregon.gov

RE: Groundwater Rulemaking Comments

Dear Ms. Hartt,

Below please find comments, critique, and suggestions from Water Climate Trust and members of the Oregon Water Justice Alliance regarding the Oregon Water Resources Department's proposed groundwater allocation rule changes to Divisions 8, 9, 300, 400, and 410. Water Climate Trust (WCT), the Oregon Water Justice Alliance (ORWJA), and the communities we represent are cautiously optimistic about OWRD's direction for deciding if new groundwater pumping permits can be approved. However, we worry that the long delay in implementing these critical parameters has allowed our groundwater levels to further deteriorate to the point that the rules will only slow their worsening rather than solve the (already significant) problem. These recommendations reflect the urgent need to protect: 1) the human right to water for essential domestic needs, and 2) instream beneficial uses and users of water including river-dependent Native American Tribes.

We firmly believe that the implementation of strong groundwater rules - both the proposed one currently up for comment and its companion one for curbing existing overallocation - is needed to: a) Curb excessive use/waste, by the agricultural industry, which pumps at least 82% of all water humans use in Oregon; b) Protect Oregon's rapidly depleting aquifers AND interconnected surface waters from permanent damage; and c) Plan for climate change-driven drought and less reliable water supplies to protect future flora, fauna, and humans: for far too long, western states in the U.S. have waged a war of dominion over water, and the devastating bill has come due in the form of degraded and shrinking water supplies. We can - and must - do better. These comments are submitted in good faith to both support components of your current proposed plan and to encourage even more robust ones. In short, with more detail below, we generally agree with your agency's assessment of the problem:

“Current rules evaluating the relationship between surface and groundwater arbitrarily limit the evaluation of hydraulically connected groundwater withdrawals on surface water availability (690-009 et seq.). As a result, where groundwater and surface water are hydraulically connected there are senior surface water right holders who are routinely regulated off while junior groundwater right holders are allowed to continue using water. These proposed rules rely on best available science to establish criteria ensuring that new permits will not further deplete already over appropriated surface water bodies, both in principle (Alley et al. 2002; Barlow and Leake 2012; Bredehoeft et al. 1982; Theis 1940; Woessner 2020; Winter et al. 1998), and in Oregon specifically

(Conlon et al. 2005; Gannett et al. 2007, 2012, 2017, and 2001; Gingerich et al. 2022; Graham et al. 2010; Herrera et al. 2014).

“Much of the water in streams during summer months comes from groundwater sources. As groundwater sources decline, less surface water becomes available in streams, rivers, and lakes to meet the needs of existing surface water users and to support healthy fish, aquatic habitat, and recreation. Additionally, the lack of a definition implementing the statutory policy directive to maintain reasonably stable water levels has led to excessive groundwater declines in some parts of the state (Scandella and Iverson 2021). Some parts of the state are experiencing dry wells and water scarcity that impact families, farmers, industry and recreation (Oregon Secretary of State 2023).”

We are unclear on how many of the state’s instream flow rights fit into this hierarchy of water rights due to the State’s disappointing legislative subjugation of them to appropriative water rights that pre-date their establishment. However, we look forward to further engaging in this process to better support related processes that elevate their primacy. We also point to the time immemorial Treaty-based water rights of the Klamath Tribes and the need to recognize the legal imperative to ensure their delivery prior to issuing any new groundwater permits within the Klamath Basin.

We also agree that at this point ANY future commercial groundwater pumping permits must be found to not negatively impact aquifer levels:

“After decades of groundwater declines (Scandella and Iverson 2021), the Oregon Water Resources Department (OWRD) is responding to the modern water realities experienced by Oregonians. To limit the long-term impact of unsustainable groundwater depletion around the state, OWRD is working to modify rules governing new groundwater right applications. With a forward-looking approach that considers the needs of future generations, OWRD is working to safeguard existing surface water and groundwater users and the livelihoods they support, while managing groundwater resources more sustainably.”

However, the long amount of time that has elapsed between the 1989 passage of Oregon’s Groundwater Quality Protection Act and today’s rulemaking process to implement key aspects of it puts many basins in a ‘too little too late’ scenario. The severity of the threat to our aquifers and interconnected groundwater is described in many reputable studies and publications, including those from OWRD and other state agencies and taskforces. As detailed on p. 5 of this [2018 Water Management Background Brief](#) from the state’s Legislative Policy and Research Office:

“Future water supply and demand are central to any discussion about water management in Oregon. In 2015, record-low snowpack and record-high temperatures resulted in drought declarations in 25 of Oregon’s 36 counties. As a result, streamflows hit record-lows to near-record lows in many parts of the state, reducing supplies for irrigation and leading some cities to implement water use restrictions. In response to this situation, Governor Brown issued Executive Order 15-09 in July 2015 directing state agencies to prepare for climate change and plan for long-term resilience to drought. The goal stated in the Executive Order is to reduce non-essential water consumption by 15 percent or more on average across all state-owned facilities on or before December 21, 2020. A second progress report on this effort was submitted to the Governor in July 2017. In December 2015, the WRD released an updated statewide water demand forecast which included estimates of water demand for agriculture, municipal, and industrial uses by 2050. The report anticipates that increases in population and changes in rainfall, snowpack, and growing seasons will likely lead to increased demand from agricultural, commercial, residential, and

industrial water users. This could result in Oregon needing an additional 1.3 million acre-feet of water annually, nearly 424 billion gallons, just to meet out-of-stream demands in 2050.”

OWRD’s own [fact sheet](#) states:

“Groundwater levels are declining in part of Oregon where the amount of water taken out of the system is more than what is replaced through natural water recharge cycles. Oregon’s groundwater resources are being used at an unsustainable rate. Climate change exacerbates these water conditions. Some Oregonians are experiencing water scarcity, water shortages, and wells that have gone dry. Groundwater use and depletion reduces surface water flows in streams, rivers, and lakes affecting fish, aquatic habitats and recreation. This issue impacts all Oregon families, farmers, cities and industries.

- In Oregon, ~1,220 water wells have gone dry across the state since June 2021.
- Streamflows have been reduced, impacting water availability and water quality.
- Municipalities are among those with required water use reductions.”

And yet, the proposed restrictions have too many off-ramps to truly succeed in achieving the goal of “Modernizing the approach to evaluating ‘is water available?’” Consider:

“The proposed rules focus on determining if groundwater is available to support new uses when issuing new groundwater rights. The rules:

- Define key terminology and criteria for issuing new water rights
- Determine water is available if groundwater is reasonably stable, does not interfere with surface water flows and the aquifer can produce the water at the requested amount
- Detail how applications would be denied if existing data did not show water is available

“This means fewer water right applications would be granted for new uses in areas of excessive groundwater declines or where new groundwater rights affect existing surface water rights.

“NOTE: The proposed rules will not change exempt groundwater use, existing water rights, groundwater applications that are already in the agency queue, and water right transfer processes.”

We understand that the irrigators and their powerful lobbyists (some of whom occupy that large house right across from your headquarters) have successfully wielded their political power to neuter the regulatory agencies’ abilities to actually regulate them for far too long. And we understand that outsized influence is largely why this process has been such a long time coming, BUT...In the interim, our aquifers have reached a crisis point due to unregulated pumping, largely by the livestock and livestock feed industry. While the members of the Oregon Water Justice Alliance are heartened to see the Oregon Water Resources Department taking steps to regulate and curtail future groundwater pumping proposals, the rulemaking process is in reality a small first step toward truly fixing the alarmingly growing problem of sustainable water use. We urge you to reconsider the above caveat of allowing commercial groundwater pumping applications that are already in the agency queue to move forward without assessing whether the aquifer can sustain them. When California passed a similar law in 2015, deep well drills in the Central Valley began running 24-7 in order to claim as much groundwater as possible before the law went into

effect. We were assured that this would not be the case in Oregon; however the mechanism to facilitate that remains unclear to us.

We strongly feel that the agency must also take an immediate hard look at the existing withdrawals that brought us to this state of dangerously depleted aquifers and curtail those that constitute ‘waste’ of our public trust waters. While we will be robustly engaged in future critical groundwater basin designation processes, we also urge you to pursue your public trust abilities to begin curtailing improperly permitted and/or enforced existing uses that constitute waste. We will be following up on this issue in more detail outside of this process.

Comments and concerns related to specific regulatory sections include:

Statutory Groundwater Terms - Divisions 8, 9, 300, and 400: Many of the term clarification recommendations below were similarly made in our previous comment letter, submitted 1.5.24. However, they appear to have been completely ignored despite a wealth of evidence as to why the detailed language is problematic. We reiterate our recommendations and concerns here, with an update based upon these changes (or rather lack thereof):

“Annual High Water Level” should indeed be more clearly defined, but not misused as a baseline
The definition of “Annual High Water Level” is useful, but it should not be inserted into other definitions when the effect is to: (1) reduce baseline groundwater levels, or (2) create ambiguity about baseline groundwater levels. The definition currently reads “the highest elevation (shallowest depth) static groundwater level that exists in a year.”

Amend Definition of “Customary Quantity”

We were disappointed to see that this statement still does not reference water waste. Please amend the definition of “Customary Quantity” to include the bold text below. This will address the fact that terms of appropriative water rights often do not prohibit or prevent wasteful water use, and in some cases even encourage it.

*“Customary Quantity” means the rate or annual amount of appropriation or diversion of water ordinarily used by an appropriator within the terms of that appropriator’s water right **and without waste as defined in Oregon statute.**”*

Reject Suggested Change to “Declined Excessively”

We are similarly disappointed to read that the latest draft still adds “Annual High Water Levels” to the definition of “Declined Excessively.” Specifically, we repeat our request that you restore the original version which reads “cumulative lowering of the water levels,” and reject “cumulative lowering of the Annual High Water Levels.” Many groundwater reservoirs have been depleted from years of groundwater pumping and inadequate recharge. Our recommendation above will ensure that such depleted reservoirs are included under the definition of “Declined Excessively.”

For example, a review of your agency’s well reports from the Klamath Basin indicates an average decrease of almost one foot per year at most of the sampled wells. This already depleted state should not be used as a permitting baseline under any circumstances.

“Declined Excessively” Section (c) - Protecting Instream Flows

In the draft rules, “Declined Excessively” includes lowering of groundwater levels in a manner that “Constitutes a decline determined to substantially interfere with a surface water source as defined in OAR 690-008-0001(8).” According to OAR 690-008-0001(8), ““Substantial or Undue Interference” means the spreading of the cone of depression of a well to intersect a surface water body or another well, or the

reduction of the groundwater gradient and flow as a result of pumping, which contributes to” a “reduction in surface water availability to an extent that” an “adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriation(s) cannot be satisfied.”

To protect instream beneficial uses and users of water, please amend the definition of “declined excessively” to include instream flows harmed by long-term declines in groundwater levels, not just “spreading of the cone of depression.” Please also include language that protects instream uses and users where an “adopted minimum streamflow” does not yet exist.

“Declined Excessively” Section (d)

In this section, the definition of “Declined Excessively” includes “lowering the Annual High Water Level within a groundwater reservoir, or part thereof, greater than 50 feet below the highest known static water level.” As written, this section could create ever decreasing groundwater levels by setting a new baseline every year. To remedy this, please replace “Annual High Water Level” with a baseline that: (1) cannot be reduced annually, and (2) reflects historic, or “pre-development” groundwater levels. Moreover, please revisit “greater than 50 feet below the highest known static water level.” This number is arbitrary and could have wildly different impacts in different locations. This number should be replaced with the desired outcome such as protecting beneficial uses of interconnected surface water and protecting small domestic wells.

“Declined Excessively” Section (f)

In this section, the definition of “Declined Excessively” includes “a lowering of the Annual High Water Level greater than 15% of the greatest known saturated thickness of the ground water reservoir. The saturated thickness shall be calculated using pre-development water levels and the bottom of the ground water reservoir, or the economic pumping level, whichever is shallower.” Again, please replace “Annual High Water Level” with a baseline that: (1) cannot be reduced annually, and (2) reflects historic, or “pre-development” groundwater levels. It is unclear how “15% of the greatest known saturated thickness . . .” correlates to the metrics used in other definitions. Most other metrics are simpler, referring to a reduction in groundwater levels. Please revise this metric so it is consistent with metrics used in the other definitions.

Economic Pumping Level

In the draft rules, “Economic Pumping Level” is based on the per-acre cost of pumping water and the per-acre value drive from pumping. In Oregon, the cost of pumping groundwater is often obscured by taxpayer subsidies for electricity and equipment.

Please add the following language to the end of this definition in order to: (1) provide a level playing among groundwater users, and (2) to ensure that pumping subsidies do not harm small domestic water users and instream beneficial uses of water.

“When determining the cost of groundwater pumping, the impact of subsidies shall be excluded.”

Excessively Declining

As requested above, please clarify that “ongoing lowering of the Annual High Water Level” does not permit an ever decreasing baseline. Moreover, please expand this definition to include groundwater levels that “harm beneficial uses of interconnected surface water.”

Substantial or Undue Interference

To protect instream beneficial uses and users of water, please amend the definition of “interference” to include instream flows harmed by long-term declines in groundwater levels, not just “spreading of the cone of depression.” Groundwater levels can decrease every summer to levels that harm interconnected surface water, but still recover every winter.

Please also include language that protects instream uses and users where an “adopted minimum streamflow” does not yet exist. In most parts of Oregon, instream flow requirements have not been established that protect endangered species or Tribal beneficial uses of instream flows. To fulfill your stated commitment to racial equity, these instream needs should be protected.

Overdrawn

We are quite concerned that our request that you do not eliminate the minimal existing language that protects instream flows was not heeded. Indeed the words “adopted minimum streamflow” have been altogether deleted from the document (twice). Specifically, please restore the following language: “Failure to satisfy an adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriation(s).” Please also include language that protects instream uses and users where an “adopted minimum streamflow” does not yet exist.

Please also expand the definition of “overdrawn” to include groundwater levels that decrease every summer to levels that harm interconnected surface water, but still recover every winter.

Reasonably Stable

Please restore the numeric requirements (aka “sideboards”) in the definition of “reasonably stable.” Staff said publicly that these requirements were eliminated in response to public comments. With respect, these comments came from water users to the detriment of stakeholders who rely on small domestic wells and beneficial uses of instream flows.

Oregon needs numeric statewide standards that define “reasonably stable.” Leaving this up to local groundwater managers will uphold historic inequities that harm river-dependent communities and low-income communities that depend on small domestic wells. This is out of alignment with the State’s commitment to racial equity.

Wasteful Use of Groundwater

Water rights and permits often do not define “waste” in a manner consistent with Oregon statutes. To remedy this, please add the bold text below to the definition of wasteful.

“Wasteful Use (of ground water)” means any artificial discharge or withdrawn of groundwater from an aquifer that is not put to a beneficial use described in a permit or water right **and Oregon statute**, including leakage from one aquifer to another aquifer within a well bore.”

Domestic Use Expanded

“The use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or *noncommercial* garden,” italics added). As explained in further detail in a prior letter and current comments from our colleague Christopher Hall from Water League, we are concerned that OWRD is inappropriately levying enforcement actions against ‘cottage farmers,’ whose <1/2 acre gardens proportionately use a miniscule amount of water compared to large scale irrigators, and who are seemingly less guilty of wasting water. All supporting evidence indicates that these very small gardens, many of which are irrigated with domestic wells, contribute a miniscule amount of aquifer strain in comparison to

large-scale agriculture and the (thankfully declining) illegal diversions for the cannabis industry. We strongly support clarifying the rules to better protect very small family farms.

Beneficial Use

The agency's definition lacks any reference to Native American people's beneficial uses. Please see "Racial Equity Impacts" section below for more information. In California, Tribal beneficial uses are defined to include both subsistence fishing and cultural uses. Oregon should adopt this definition as a baseline and act to protect these uses from excessive groundwater extraction.

Determination of Hydraulic Connection

Section 690-009-0040 should be amended in a manner consistent with the precautionary principle. Specifically, the rules should require OWRD to assume that groundwater and surface water are connected unless and until there is evidence to prove they are not connected. Proposed amendments to the rules attempt to assume that there is not a connection, and then place the burden on Oregon to prove that there is a connection.

Section 410: 690-410-0010 Groundwater Management

The current rules state: "(j) Adequate and safe supplies of groundwater for human and livestock consumption are given priority over other uses during times of shortage." We seriously question how livestock consumption could possibly be given priority over the survival of native species. However, we do not see any relevant changes in the proposed rules to address this prioritization, which 1. undermines the time immemorial water rights of the Klamath Tribes (and beneficial uses of instream flows for other river-dependent Tribes); and 2. is likely to result in 'take' of protected and endangered species. This is an oversight that needs to be addressed. This language directly undermines your stated commitment to racial equity by prioritizing water for livestock over traditional food sources for Oregon Indigenous people.

Additional comments and concerns:

Lack of proactive incorporation of climate change stressors into permitting decisions

At the May 2024 in-person hearing in Salem, we engaged in dialogue around the purely reactive nature of the proposed rule changes and their lack of attention to climate change's likely impact on the hydrological cycle. Indeed, the word 'climate' does not even appear in the proposed rules at all; the closest is a reference to a climatologist on the RAC. We reiterate our deep concern that the approach to deciding which groundwater basins are in sufficient decline to warrant a denial of new pumping permits fails to consider widely accepted climate modeling projections of worsening water storage capacity over a long timeframe throughout much of the state. For example, our reading of the rules indicates that, if an aquifer 'bounces back' from the precipice of collapse after a single big precipitation year, OWRD would likely start approving groundwater pumping applications for it again. And then when back-to-back mega-drought years strike again, those wells will have been established and could only be curtailed through a critical groundwater basin designation and a much more difficult curtailment process.

We once again posit that proactive planning for climate change - including precautionary action to protect our public trust water resources and mitigate the harm from lack of water availability- must be more actively incorporated into all of OWRD's water allocation planning and decision-making processes.

Economic Impact Analysis

We also agree that the groundwater crisis requires us to take action to rectify its decline regardless of economic impact, and that failure to act would cause significant economic harm on top of the cascading environmental

harms. However, we would like to emphasize the continuing lack of detailed attention given to non-consumptive uses and how a lack of water severely harms them and those who are employed in these fields, as detailed in your analysis:

“According to Pilz et al. (2023), approximately 48% of Oregon’s total economic output and 44% of the state’s employment rely on water-dependent businesses. **Notably, these estimates are conservative, because they do not include the economic contributions from recreation, commercial fishing, or power generation (Pilz et al. 2023).** Approximately 22% of all of Oregon’s water withdrawals come from groundwater; just over 80% of those groundwater withdrawals are for irrigation purposes (Dieter et al. 2018).”

However, the document then goes on to detail those economic realities. Freshwater-centered outdoor recreation generated \$63.2 billion in 2018 (likely even higher proportionately during Covid); and commercial fishing off of Oregon’s coast generated \$28.4 million in 2019, despite plummeting salmon populations. Commercial, irrigated agriculture only generates about \$7.3 billion annually. All other industry in the state (from manufacturing to service) generates about \$88.8 billion annually.

So, why are we still allowing an industry that generates less than 4% of the state’s GDR suck up 80% of the water that we divert? Food? Of course! We all need to eat. However, our cultural resistance to requiring those who use public trust resources like groundwater to engage in conservation of natural resources has taken us down a dead end road. The proposed rule states “growth of irrigated agriculture may need to be supported by water conservation actions that result in conserved water or, through transfers of existing water rights where new water rights are not available.” For far too long, water management and funding agencies have relied on ‘voluntary’ conservation measures that have consistently failed to bring about the needed results. The proposed rule will curb new uses that could tip us over the edge and into aquifer collapse, but we are nowhere near being done with addressing our fundamentally unjust water allocation processes. If irrigators want to use our public water, they need to be judicious with its use, and state agencies need to monitor and enforce conservation measures. We hope that the next crucial step in your agency’s transformation - the critical groundwater designation process, addresses it head-on.

Racial Equity Impacts - Treaty water rights

ORS 183.335(2)(a)(F), as amended by HB 2993, requires state agencies, when providing notice of a rulemaking, to provide a statement identifying how adoption, amendment or repeal or the proposed rules will affect racial equity in this state. We feel that the statement provided within this proposed rule is wholly inadequate, as detailed below. OWRD and this rulemaking process also seem subject to [House Bill 477](#), which updates a number of statutes related to environmental justice and the state’s Environmental Justice Council. It is unclear from the documentation provided whether its obligations have been fulfilled in regard to this law.

We largely agree that the proposed rules will be a net positive for lower-income residents, a demographic that also proportionately includes more people of color than other, wealthier income brackets in the state, many of whom rely on wells for their drinking water and other domestic uses. However, the assessment of how the proposed rule’s implementation would more specifically impact Tribes and other people of color is alarmingly lacking in substance and little more than a pro forma fulfillment of its legal requirement. It is appalling that the Department thought it worthy to publish that one RAC member said: “Because everyone relies on food and clothing, to the extent the rulemaking impacts agriculture, everyone should be impacted equally.” Such a blanket - and untrue - statement is fundamentally racist in its assumptions and unworthy of publication in a planning document that purports to be science-based. And yet, it is not inconsistent with the lack of action on racial equity for water. From its very beginnings, western water law was DESIGNED to take water from nature and Tribal peoples and empower white landowners to control it. We have a very, very long way to go in restoring equity and balance when it comes to water. The state of [Oregon’s 2021 DEI Action Plan](#) only mentions the word water twice

- in reference to costly water bills and the loss of Tribal water rights during the atrocious treaty terminations of 1959. And [Oregon's 2023-2027 Racial Equity Plan](#) only mentions it once, repeating the exact same language about the loss of Treaty water rights. Neither propose any actions to right these wrongs.

Many of the federally recognized Tribes and unrecognized Tribal cultures in our region rely on clean, abundant, and free-flowing waters not only for drinking water, food security and access to first foods but also for employment, culturally significant activities, and spiritual practices. Marshes, which are often heavily influenced by groundwater levels, are an important source of food (wocus) and traditional materials (tule reeds) and an important nursery for many aquatic species. Their decline disproportionately impacts Native American Tribal people, and a robust groundwater protection and recovery plan would be a significant positive impact.

Additionally, with 80+% of Oregon's agricultural products going out-of-state, any broadly applicable agricultural production impacts on Oregonians are minimal. However, the Latinx farmworker community may indeed experience disproportionate and specific impacts from groundwater decline and regulation, as [92% of Oregon's 120,000+ farmworkers identify as Latino](#). These farmworkers are also generally low-income and more likely to experience water insecurity in their homes.

Furthermore, as stated:

“The RAC discussed the issue of racial equity in the context of this rulemaking, noting that data were lacking to quantify impacts adequately, but agreed that a qualitative (*sic*) assessment was feasible.”

It appears that no actual qualitative assessment was seriously considered despite the state's purported commitment to racial equity. We will indeed continue to further engage with both OWRD and State leadership to help facilitate a firmer commitment to – and action to support – racial justice. While still apparently in draft form, ODFW's sister agency [DEQ has at least identified assessment mechanisms](#) for impact evaluation.

It is also disturbing that state agencies continue to postulate that sending a letter/invitation to a Tribal government P.O. Box constitutes consultation. There are very good reasons as to WHY Tribal leaders and communities balk at participating in public agency decision-making processes. Far too often, decision-makers and bureaucrats smile and nod when they do speak up, tic off a check-box on their diversity chart, and continue in the same direction as always. Why give credence to a government and its processes that were designed to marginalize - and even completely remove them - from the outset?

If OWRD is truly committed to understanding and upholding Tribal treaty rights to water and beneficial use, it must do much more than this pro forma process. It must engage with the Tribes in the manner that their treaties entitle them to - on a government-to-government level rather than as a member of the general public. Yes, two Tribes sent representatives to the RAC, but there is little evidence of their input significantly contributing to the draft before us; nor do they speak for all Tribal people living within the state of Oregon. I can only assume from the significant lack of Tribal peoples speaking at public information sessions and hearings that there was insufficient direct outreach within these water justice communities.

One concrete example of why some Tribal members within ORWJA are skeptical of the process is how OWRD handled the highly controversial 2019 transfer of groundwater pumping rights for agricultural use to groundwater rights for energy industry use via the Swan Lake Pumped Storage facility proposed for the lands and waters of the Klamath-Modoc people. Not only were these likely illegal transfers rubber-stamped by OWRD staff without

any assessment of how it might impact the Klamath Tribes' treaty water rights, no real effort was made to engage them despite their firmly stated opposition to the project. Sending a notice of availability to comment to the general tribal council address is not consultation. Furthermore, neither the Tribes nor any other members of the public were notified when the water right transfer applications were approved in 2019. We only learned about it a few months ago after making direct inquiries to the Department about their seemingly incomplete status as displayed on your website.

Municipal Water Supplies:

Multiple municipalities have expressed concerns about how this rule could affect their water security. We understand their fears, but also read the current iteration of the rules as having sufficient flexibility (perhaps even too much) and place-specific considerations to continue to allow for their sustainable use of groundwater. The human right to water for essential needs is something that a democratic society must recognize for all people. WCT and ORWJA support a reasonable path to water security for domestic uses. At the same time, we also believe that any growth plans must also take a science-based approach to assessing whether the water sources they rely on can support additional build-outs.

About Us

Water Climate Trust is a non-profit organization working in Oregon, and throughout the U.S. West, to restore freshwater ecosystems with Indigenous communities and other stakeholders who depend on them for food, jobs, health, recreation, and cultural survival. To this end, we work to improve water and climate policy and investments through grassroots organizing, advocacy, research, communications, and enforcement.

The Oregon Water Justice Alliance is a new collaborative working to protect instream uses of water for diverse stakeholders including Native American Tribes, the commercial and sport fishing communities, and the outdoor recreation industry. The Alliance was co-founded in 2023 by the non-profit groups Maqlaqs Geetkni, Maqlaqs Paddle, Ríos to Rivers, Water League, and Water Climate Trust.

Summary

The best time to initiate this process was in 1989 when Oregon's Groundwater Quality Protection Act was first passed - or even in 1950 when the state's first Groundwater Management bill was passed. The third best time is NOW. The strength of these 'rules' and their implementation is critical to the health of Oregon's aquifers and interconnected surface waters. Please implement the strongest version of them possible post haste so we can get on to the real work of looking at where the most water harm/waste is being done NOW and getting a handle on it before some of our aquifers collapse.

In sum, we understand that the proposed rules represent a sea change in how the state of Oregon regulates groundwater (i.e. with an eye toward long-term sustainability rather than whatever the ag industry wants) and are heartened to see the beginnings of a shift toward water sustainability and justice. However, we are concerned that 1) the delay in addressing the existing overallocations that got us into this mess to begin with has created broadly degraded aquifers with unhealthy levels that will be used as a baseline according to your revised definitions; and 2) that adopted changes made at the behest of the industry are likely to undermine your ability to achieve your stated goals. Indeed, we would posit that there should be a moratorium on all new commercial groundwater pumping permits until such time as the critical groundwater basin analysis and designation process for all of the basins in the state is complete. This would stop the infliction of new wounds and allow the agency to redirect internal capacity towards more rapidly implementing the critical groundwater basin designation process that the state insists is necessary to curtail existing wasteful groundwater pumping. Moreover, we also posit that the Public Trust and Beneficial Use doctrines in fact empower you to stop draining our aquifers without this lengthy process. Groundwater is a giant battery of water that your agency has allowed irrigators to drain for decades. The Public Trust Doctrine requires you to hold water in trust for the future. You seemingly acknowledge that in terms of this proposed rule for FUTURE uses but appear hesitant to apply them to stop the existing exsanguination.

We also hereby incorporate by reference the far more thorough and technically detailed comments of our ORWJA member organization Water League.

In closing, our organizations realize the great difficulty of the tasks that OWRD and its governing Commission must undertake to get our state onto a path of water sustainability. And we are encouraged by this rulemaking direction for FUTURE groundwater pumping permitting despite its flaws, which we hope you will rectify in the final published rule. AND we encourage you to not rest for a moment before you put even more effort into curtailing the most harmful of our existing irrigation permits. We also urge you to more robustly engage with the Tribes, whose instream flow rights (including the Klamath Tribes' time immemorial ones) are being violated by the wonton excess of a virtually rogue agricultural industry.

When it comes to water justice, we must work tirelessly to ensure that those who were denied a voice in the handing out of 'senior' water rights during the racist subjugation and 'settling' of Oregon are made whole in our forward-looking processes. For many Tribal peoples, that translates to ensuring instream rights for nature, and for the cultures that have depended on healthy waters and fisheries since time immemorial. Thank you for your work thus far. We understand that it is a difficult task to right regulatory paths that are go deeply ingrained into the West's culture. We hope that you can accept and evaluate our constructive criticism with an eye toward continually moving the arc of justice forward.

Sincerely,

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